ACORN

Jennifer J. Johnson
Secretary, Board of Governors
Of the Federal Reserve System
(12 CFR Part 230; Docket No. R-1197)
(Docket No. OP-1198)

and

Office of Comptroller of Currency (Docket No. 04-14)
Federal Deposit Insurance Corporation
Office of Thrift Supervision (No. 2004-30)
National Credit Union Administration

Re: Proposed Rule – Regulation DD
and Overdraft Protection Guidance

We are writing to express our opposition to the Federal Reserve Board's proposal to regulate bounce loans, or so-called "bounce protection," under the Truth in Savings Act (TISA). Bounce loans should be regulated under the Truth in Lending Act (TILA). The Board and the other federal banking regulators should also take steps beyond the proposed guidance to halt the other abuses of bounce loans, including encouraging consumers to use this tremendously high-cost product as a credit source, when much cheaper alternatives exist.

Too many banks prey on low-income customers, seeing these short-term overdraft loans as an easy way to make money. Consultants tell them to set up branches in supermarkets in poor neighborhoods to maximize revenues generated by overdrafts. Banks are doing the same thing payday lenders do, with one exception: they are not even required to disclose the finance charge or Annual Percentage Rate (APR) on their overdraft loans.

In order to maximize profits from bounced checks, a number of banks have implemented practices that actually result in customers bouncing more checks. When a customer has several checks which are presented at the same time to the bank for payment, many banks such as Wells Fargo clear a customer's checks from largest to smallest in order to deplete customer's account and cause more of the smaller checks to bounce.

ACORN has been a leader in fighting for financial justice in low- and moderate-income communities. We fought for passage of the Community Reinvestment Act. We've

**Association of Community Organizations for Reform Now**
National Office: 739 8th Street S.E., Washington, D.C. 20003 • 202-547-2500 FAX 202-546-2483

battled to save the CRA from right-wing critics. We continue to struggle against predatory lending across the country. We have forced tax preparation companies to change the way they market high-cost Refund Anticipation Loans. We also work with responsible banks to help residents in our neighborhoods build equity through home ownership. Now we are concerned that the deceptive practices of some banks under the guise of overdraft protection are taking advantage of the people we represent.

We cannot understand how the Board (along with all of the federal banking regulators) can explicitly admit that bounce loans are credit, then fail to regulate them under the key federal law governing credit disclosures. Bounce loans are an extraordinarily expensive credit product. For example, a $100 overdraft will incur at least a $20 fee. If the consumer pays the overdraft back in 30 days, the APR is 243%. If the consumer pays the overdraft back in 14 days, which is probably more typical for a wage earner, the APR is 520%.

Banks should ensure that customers are aware of--and have access to--overdraft protection plans. Whereas the effective APRs on bounce loans may be as high as 500%, the APR on a typical overdraft protection loan is under 20%. However, the requirements to qualify for overdraft protection are unnecessarily strict. The ACORN Housing program has had families who have qualified for home mortgages through major banks, but have been denied overdraft protection.

The proposed guidance issued by the federal banking regulators does not go far enough in protecting consumers from the harms of bounce loans. The banking regulators must implement stronger protections for consumers, and those protections must be legally enforceable by both regulators and the consumers who are harmed by bounce loans. There is no private right of action in TISA as there is in TILA.

Stronger protections are necessary to prohibit banks from marketing bounce loans as a credit source, essentially encouraging consumers to write bad checks for their credit needs, and without a firm commitment to cover them. These consumers, often low-income and vulnerable, are likely to use bounce loans repeatedly and become trapped in a cycle of debt. Conversely, banks often do not seek affirmative consumer assent when imposing bounce loans, and consumers are charged these expensive bounce fees without their consent or any prior warning. The banking regulators must mandate that positive consumer opt-in is required for any form of credit, including bounce loans.

Stronger protections are also needed to restrict bounce loans made accessible through automated teller machines (ATMs) and debit card transactions. There is simply no justification for allowing a consumer to overdraw an account for a transaction that is on-line, real time, for which the banks can confirm funds availability. The bank's purported reasons why bounce loans benefit consumers – saving them from merchant penalties, late charges, and embarrassment – are completely inapplicable to ATM and many debit transactions.

We are not opposed to overdraft programs in general. We are only opposed to bounce loans that are exorbitantly expensive, that are not accompanied by APR disclosures, that are imposed without affirmative consumer consent, or that are advertised to consumers as an easy source of credit.

Without TILA coverage and stronger consumer protections, bounce loans will continue to undermine years of efforts to bring fairness to the way banks treat low-income Americans.

Previously, consumer advocates and Treasury had agreed that bank accounts are safer and cheaper than going to check cashers or keeping large amounts of cash at home. Given the risk of incurring multiple overdrafts through unfair bounce loan products, we can no longer make that claim with as much certainty– going to a check casher might just be cheaper and safer than risking expensive bounce loan fees. Ultimately, the irresponsible actions of banks in offering bounce loans may harm progress towards a goal we all share: expanding access to mainstream financial resources among low-income consumers.

Sincerely,

Maude Hurd
ACORN National President